

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
BARBARA BOWLING, ) CASE NO. 06-61630 JPK  
 ) Chapter 13  
Debtor. )

ORDER ON OBJECTION TO CLAIM REGARDING  
CURRENT MORTGAGE PAYMENT ["OBJECTION"]

On July 26, 2007, the debtor, by counsel, filed an Objection to Claim No. 4-1 of GMAC Mortgage Company. The Objection is focused exclusively on the amount of the monthly mortgage payment, and is not at all addressed to the amount of the pre-petition indebtedness asserted by the claim. The sole ground stated for the Objection is that the debtor "is adamant that her monthly \$704.27 based on her principal and interest and real estate tax bill", whatever that is intended to mean.

The Court first notes that an assertion of the amount of a monthly mortgage payment to be paid by the debtor is not a "claim" as that term is used in 11 U.S.C. § 502; *See*, § 502(b), which states that "the amount of such claim [is determined] as of the date of the filing of the petition" which by implication means that the purpose of a "claim" is to assert the amount of the indebtedness as alleged by the creditor to be owed it by the debtor as of the date of the petition. Even if the assertion of a present mortgage payment amount in a proof of claim can somehow be deemed a "claim" in and of itself, the debtor's grounds of objection do not override the *prima facie* validity of a claim provided by 11 U.S.C. § 502(a) and by Fed.R.Bankr.P. 3001(f).

The Objection appears to arise from the debtor's uncertainty as to the amount of the payment to be maintained by the debtor pursuant to 11 U.S.C. § 1322(b)(5) with respect to the creditor's claim.

The operative facts stated in the Objection are that apparently the creditor has asserted

an increase in the payment to be maintained by the debtor pursuant to 11 U.S.C. § 1322(b)(5) which the debtor either does not comprehend, or with which the debtor does not agree. Without question, the subject matter of the Objection is within the jurisdiction of this Court: Because the matter raised by the Objection is necessary for determination of the debtor's compliance with 11 U.S.C. § 1322(b)(5), the matter "arises in" a case under Title 11 [11 U.S.C. § 1334(b)], and thus is within the jurisdiction accorded to this Court by the United States District Court pursuant to 28 U.S.C. § 157(a)/L.R. 200.1(a) of the United States District Court for the Northern District of Indiana.

The issue raised by the Objection thus does not involve the Court's subject matter jurisdiction. Rather, it involves the procedural mechanisms by which the debtor must proceed.

The debtor seeks a determination by the Court of the amount required by her to be paid pursuant to 11 U.S.C. § 1322(b)(5) as the amount necessary to "maintain" payments with respect to the secured claim of a mortgagee within the provisions of 11 U.S.C. § 1322(b)(2). The debtor apparently disputes the amount asserted by the creditor necessary to conform to these statutory requirements. The debtor's request is essentially a request to determine an account arising under the contractual arrangements between the debtor and the creditor, particularly in view of the fact that the adjustment in the payment allegedly asserted by the creditor results in adjustments in relation to an escrow account maintained by the creditor in relation to the debtor's obligations to the creditor. There is no provision in the Bankruptcy Code for this type of action.<sup>1</sup> The debtor's action most nearly parallels an action for the common law remedy of an "accounting", the origins of which are lost in the mists of time.<sup>2</sup>

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<sup>1</sup> The Court eschews reliance upon 11 U.S.C. § 105(a) in this context.

<sup>2</sup> "Equitable jurisdiction for an accounting is usually invoked in cases where: (1) there is a fiduciary relationship between the parties, accompanied by a duty on the part of the defendant to render an account; (2) there are mutual accounts, or, if the account is all on one side, the account is complicated; and (3) there is a need for discovery. A court may also assume

State law may or may not be controlling with respect to the underlying nature of the remedy sought by the Objection, but it is at the very least instructive. In terms of Indiana law, the debtor's assertions are in essence a request for the Court to undertake the equitable determination of an "accounting"; See, *Denny v. Scoonover*, Ind. App. in Banc., 153 N.E. 779, 781 (1926); *Atwood v. Prairie Village, Inc.*, Ind. App. 401 N.E.2d 97, 100 (1980); *Anacomp, Inc. v. Wright*, Ind. App. 449 N.E.2d 610, 615-616 (1983); *rehrng den.*, (1983); *Lester v. Hinkle*, Ind. 141 N.E. 463 (1923). While the foregoing cases do not directly address the nature of the issue presented by the debtor to the Court, they are clear enough in their analytical underpinnings that the request made by the debtor invokes the equitable jurisdiction of the Court. That being so, the debtor's request falls within the provisions of Fed.R.Bankr.P. 7001(7) – "a proceeding to obtain . . . other equitable relief", i.e., an accounting as to the amount the debtor is required to pay to a fiduciary account with respect to the debtor's obligation to that account. Because the debtor requests a determination as to the amount to be paid, rather than an accounting of the amount actually paid, the proceeding falls within the provisions of Fed.R.Bankr.P. 7001(9), as constituting "a proceeding to obtain a declaratory judgment relating to" "other equitable relief" under Fed.R.Bankr.P. 7001(7).<sup>3</sup>

The Court thus determines that it has jurisdiction with respect to the matter addressed by the Objection. However, the procedural mechanism employed by the debtor to present this matter to the Court is not correct: The matter must be presented by an adversary proceeding.<sup>4</sup>

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jurisdiction where other grounds for invoking equity, such as fraud, multiplicity of suite, and various other grounds, are present." 1 Am.Jur.2d., Accounts and Accounting, § 54, p. 611 (1994).

<sup>3</sup> Apart from considerations of state law, a remedy for "an accounting" is an equitable remedy sanctioned by federal law in relation to matters before a federal court; *Bates v. Northwestern Human Services, Inc.*, 466 F. Supp.2d 69, 103-104 (D.C.D.C.C. 2006).

<sup>4</sup> The Court notes that 12 U.S.C. § 2605(e) provides a mechanism by which the debtor may receive information relating to the substance of their Objection if their mortgage is "a

The Court finds that the debtor's request does not properly present a judicable matter to the Court.

IT IS ORDERED that the debtor's Objection is denied, without prejudice to submission to the Court of the controversy raised by the debtor in accordance with applicable law and procedures.

Dated at Hammond, Indiana on September 6, 2007.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor

Trustee, US Trustee

GMAC Mortgage Corporation, 500 Enterprise Road, Suite 150, Horsham, PA 19044

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federally related mortgage loan", by means of making a "qualified written request" to the servicer of the loan. 12 U.S.C. § 2605(f) provides monetary remedies with respect to servicers who fail to comply with the requirements of 12 U.S.C. § 2605. Whether or not the United States Bankruptcy Court for the Northern District of Indiana has jurisdiction pursuant to 12 U.S.C. § 2614 with respect to a failure to comply with the law's requirements concerning a "qualified written request" is a question for another day. However, suffice it to say that debtor must utilize the provisions of 12 U.S.C. § 2605(e) before seeking redress in this Court with respect to an issue which a "qualified written request" may answer. The debtor is seeking an equitable remedy. In order to establish their entitlement to this equitable remedy, the debtor must demonstrate that they have exhausted their legal remedies, and that resort to the Court's equitable jurisdiction is necessary to obtain relief to which they may be entitled; See, *Adamszewski v. Local Lodge 1487, AFL-CIO, et al.*, 496 F.2d 777, 786 (7<sup>th</sup> Cir. 1974) ["To be entitled to injunctive relief a party must show that he has no adequate remedy at law and will suffer irreparable harm unless the injunction issues"]. Failure to exhaust statutory (i.e., legal) remedies before seeking to invoke a federal court's equity jurisdiction fails to validly invoke the court's equity jurisdiction; *In re Leonard*, 125 F.3d 543, 546 (7<sup>th</sup> Cir. 1997). The debtor has a statutory, i.e. legal, remedy which the record does not establish they have exhausted. Thus, even if the debtor reasserts her request to the Court in the form of an adversary proceeding, absent establishing that they have pursued the remedy provided by 12 U.S.C. § 2605(e) and have not been accorded the relief provided by that legal remedy, any resort to invocation of the Court's equitable jurisdiction to require an accounting will fail.